IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4829 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAY CO OPERATIVE BANK LTD., - Petitioner(s)
Versus
RAJESHRIBEN RAVINDRABHAI BHINDE & 1 - Respondent(s)

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Appearance :
MR KETAN D.SHAH FOR MR TUSHAR MEHTA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR GM JOSHI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 11/01/2007

ORAL JUDGMENT

1 The petitioner, a Cooperative Bank, has challenged order dated 15.4.1996 made by Gujarat State Co-operative Tribunal, Ahmedabad in Appeal No. 187 of 1994.

2 Respondent No.1 herein applied for loan from the petitioner bank on 24.11.1981 and also made application for being inducted as a member of the petitioner society on the same day. Admittedly the loan was processed and disbursed on the same day i.e. 24.11.1981. The Board of Directors have resolved to admit respondent No.1 as a member on 30.11.1981. As respondent No.1 failed to discharge the liability and repay the borrowed amount, the petitioner bank instituted Lavad Suit No.2573 of 1989. The Board of Nominees vide judgment and order dated 9.5.1994 allowed the Lavad Suit qua respondent No.1, the original borrower, but rejected Lavad Suit qua respondent No.2 - the Guarantor. Therefore, an appeal was preferred only by the borrower – respondent No.1.

3 The Tribunal in its impugned judgment and order has allowed the appeal on the limited ground of absence of jurisdiction qua Board of Nominees, because according to the Tribunal on the date of disbursement of loan viz. 24.11.1981 the borrower was not a member of the petitioner society and had become member only on 30.11.1981. The Tribunal has not recorded any decision on merits of the matter having allowed the appeal only on this jurisdictional point.

4 The learned Advocate for the petitioner- bank has invited attention to the decision of this Court rendered in case of *Textile Traders Co-op. Bank Ltd. Vs. P.K.Thakker Construction Pvt.Ltd. 2004(1) G.L.H. 335* wherein this Court has specifically come to the conclusion that when the application for membership is given by the applicant along with other documents for loan, merely because the administrative procedure regarding the application for membership is not completed, it cannot be said that the loan documents executed by the applicant were not in the capacity as member of the society when the membership was ultimately granted, because the resolution granting membership would relate back to the date of the application.

5 Though served there is no appearance on behalf of respondent No.1-borrower.

6 In the aforesaid circumstances, the issue raised in the present petition stands concluded by the aforestated decision of this Court and it is not necessary to discuss any other issue considering the fact that the Tribunal in its impugned judgment and order has not rendered any decision on merits of the matter. In the result, the petition is allowed and the impugned judgment and order dated 15.4.1996 of Gujarat State Cooperative Tribunal is quashed and set aside. Appeal No. 187 of 1994 stands restored to file with a direction to the Tribunal to decide the same on merits in accordance with law.

7 The petition is allowed in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A. Mehta, J)

m.m.bhatt